SUPREME COURT OF THE UNITED STATES.

No. 235.—October Term, 1927.

News Syndicate Company, *vs.* The New York Central Railroad Company, The Pennsylvania Railroad Company, et al.	On Certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

[November 21, 1927.]

Mr. Justice Butler delivered the opinion of the Court.

Plaintiff in error sued for amounts of reparation awarded by the Interstate Commerce Commission. Defendants in error demurred to the complaint asserting that it failed to state a cause of action and that the Commission's order was void for want of jurisdiction because it dealt solely with charges for transportation from a point in Canada to a point in the United States. The district court sustained the demurrer and gave judgment of dismissal. The case was taken to the Circuit Court of Appeals; and, after hearing the parties, that court certified certain questions concerning which it desires instructions for the proper decision of the cause. § 239, Judicial Code. U. S. C. Tit. 28, § 346.

The certificate shows that, June 28, 1923, plaintiff in error complained to the Interstate Commerce Commission against defendants in error and others that during the preceding two years it shipped numerous carloads of newsprint paper from Thorold, Ontario, to New York City and bore charges exacted by defendants in error based on through rates of 37 cents per hundredweight prior to July 1, 1922, and 33.5 cents thereafter, and that these rates and the portions thereof applicable to the transportation within the United States were excessive, unduly discriminatory and unjustly prejudicial in violation of the Interstate Commerce Act; that the Commission found the rate in force between August 26, 1920, and July 1, 1922 unreasonable to the extent it exceeded 32 cents

and the rate thereafter applied unreasonable to the extent that it exceeded 29.5 cents, and that plaintiff in error suffered damages in respect of its shipments after July 2, 1921, in the amounts by which the charges were so found to be unreasonable and was entitled to reparation from the carriers that "engaged in the transportation of those shipments within the United States."

The reports of the Commission set out in the certificate (95 I. C. C. 66; 102 I. C. C. 365) show that Thorold is a place in Ontario on the Canadian National Railways 30 miles from Black Rock, New York, where connection is made with the New York Central, the Delaware, Lackawanna and Western and other lines, and 12 miles from Suspension Bridge, New York, where connection is made with the New York Central, Lehigh Valley and other lines, and that Black Rock is 414 miles and Suspension Bridge is 447 miles from New York City. The rates complained of applied over several railroads from each of these junctions. No rates were made or published for the transportation from the international boundary to New York City. The Commission did not determine what would be just and reasonable rates for this transportation.

The questions certified follow.

1. Where a railroad of the United States and a railroad of the Dominion of Canada unite in the publication of a joint through rate from a point within the Dominion of Canada to a point within the United States, the rate covering transportation both in Canada and in the United States, has the Interstate Commerce Commission of the United States jurisdiction, on complaint of a shipper or consignee made against the United States railroad alone, to determine the reasonableness of such joint through rate?

2. Where a shipper or consignee of freight shipped to it at a destination in the United States from such point in the Dominion of Canada has paid at destination to the United States railroad the full published joint through freight rate thereon, has the Interstate Commerce Commission, upon a finding by it that such joint through rate was unreasonable and unjust, but in the absence of a finding that the charges for the transportation in so far as it took place within the United States were unjust and unreasonable, jurisdiction to make an order for the payment of damages to such shipper or consignee in the amount that the entire transportation charges on the basis of the joint through freight rate exceeded the charges which would have been assessed on the basis of the joint through freight rate found by the Commission to have been reasonable?

3. When the Interstate Commerce Commission had made such an order against the United States carrier alone for the payment of damages arising from its finding of the unreasonableness of such published joint through rate, can a suit thereon, under section 16 of the Interstate Commerce Act, be maintained solely against the United States carrier?

4. Did the district court err in sustaining the demurrer to the said petition?

As to question 1.—The Interstate Commerce Act applies to the lines that carried, and to the transportation of, the paper from the international boundary to New York City. § 1 (1) and (2).* It was the duty of defendants in error to establish just and reasonable rates for that service. § 1 (5), § 6 (1) and (7). They failed to make or publish any rate applicable to that part of the transportation. Section 8 makes them liable for damages sustained in consequence of such failure. Had the through rate been just and reasonable, no damages would have resulted to plaintiff in error. Its right to reparation does not depend upon the amounts retained by defendants in error pursuant to agreed divisions. *Louisville & Nashville R. R.* v. *Sloss-Sheffield Co.*, 269 U. S. 217, 231. Their breach of the statutory duty was a proximate cause of the losses complained of. The failure to establish rates covering the transportation from the international boundary contravened the provisions of the Act and compelled plaintiff in error to pay the through charges complained of. The Commission had jurisdiction to determine whether plaintiff in error was entitled to an "award of damages under the provisions of this Act for a violation thereof." § 16 (1). And it was the duty of the Commission to ascertain the damages sustained. It is obvious that, in the ascertainment of damages, the Commission had jurisdiction to determine the reasonableness of the charges exacted.

As to question 2.—The Commission did not specifically find whether the portions of the charges fairly attributable to transportation within the United States were excessive to the extent that the through rates were found unreasonable. While the findings seem to indicate that the Commission held the entire excess should be charged against the American lines, we shall consider the question on the basis therein stated. The Canadian lines furnishing

*United States Code, Title 49, chapter 1, contains the Interstate Commerce Act, preserving the section numbers.

the transportation from Thorold to the international boundary were not before the Commission and were not sued. The defendants in error participated in the making of the through rate and actually collected the excessive charges. By their failure to comply with the Act, plaintiff in error was compelled to pay charges based on the through rates. On the facts stated, the Commission was authorized to hear the complaint, § 13 (1), and had jurisdiction to make the order. § 16 (1). The question should be answered in the affirmative.

As to question 3.—The statement of the case and what has been said as to questions 1 and 2 make it plain that this question should be answered in the affirmative.

As to question 4.—Section 239 authorizes the Circuit Court of Appeals to certify to this court "any questions or propositions of law concerning which instructions are desired for the proper decision of the cause." It is well-settled that this statute does not authorize the lower court to make, or require this court to accept, a transfer of the case. The inquiry calls for decision of the whole case. It is not specific or confined to any distinct question or proposition of law, and therefore need not be answered. *The Folmina*, 212 U. S. 354, 363; *United States* v. *Bailey*, 9 Pet. 267, 273-274; *United States* v. *Mayer*, 235 U. S. 55, 66, and cases cited.

Question 1 is answered "Yes, for the ascertainment of damages."
Question 2 is answered "Yes."
Question 3 is answered "Yes."
Question 4 is not answered.

A true copy.

Test:

Clerk, Supreme Court, U. S.